

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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REGULATORY IMPACT STATEMENT (RIS)
and
COST-BENEFIT ANALYSIS

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2014-028 LR

ORR rule set title:

MISS DIG Underground Facility Damage Prevention and Safety

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Public Service Commission

Name and title of person completing this form; telephone number:

Sally Wallace, Administrative Law Specialist; 517-284-8087

Reviewed by Department Regulatory Affairs Officer:

Liz Arasim
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
- (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
- (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
- (d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

- (a) 0-9 full-time employees.
- (b) 10-49 full-time employees.
- (c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

These rules primarily address the Commission’s role in enforcement of the MISS DIG Underground Facility Damage Prevention and Safety Act, 2013 PA 174. MCL 460.731(4) authorizes the Commission to promulgate rules for the processing of complaints. These rules do not exceed any state or federal standard.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

These rules are far more limited than the rules adopted in some other states where the MISS DIG statute delegates more responsibility to the public utilities commission or other state agency. These rules are similar to the hearing procedures and due process protections used in enforcement of the Michigan Gas Safety Standards (R 460.20101 – R 460.20606).

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

These rules duplicate state law only to the extent necessary to provide context or clarity for users of the rules.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

These rules are primarily designed to provide: (1) clear instructions on how to file a complaint with the Commission alleging a violation of MISS DIG; (2) an explanation of how complaints are processed by the Commission staff; and (3) a means to contest or settle a complaint including the use of alternative dispute resolution.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

The behavior/harm aspect of MISS DIG is addressed by the statute. The rules are designed to provide guidance on complaint processing once the harm identified in the statute has allegedly occurred.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The MISS DIG Underground Facility Damage Prevention and Safety Act, 2013 PA 174 (MCL 460.721 to 460.733) was enacted to protect the health, safety, and welfare of Michigan citizens. The proposed rules provide clarity regarding enforcement procedures.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

This is a new rule set.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

The Commission spends approximately \$4,000 on publication of notices for rulemaking and holding a public hearing.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

No additional funds are required for the promulgation of these rules.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

Because the MISS DIG statute delegates responsibility for addressing complaints to the Commission, the objective of the rules was to make the complaint process clear and to provide alternatives to adjudication including settlement through alternative dispute resolution. By providing alternatives, it is anticipated that addressing MISS DIG complaints will be less burdensome for the agency and for complainants and respondents.

Impact on Other State or Local Governmental Units:

(11) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

Under the MISS DIG statute, the Commission has the authority to assess fines for violations of the act. These fines are designated for use in safety training. The State and local governments that comply with

the requirements of the act should see no fiscal impact from these rules.

(12) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The rules impose no additional program, service, duty, or responsibility on any city, county, town, village, or school district beyond what is already required by the statute.

(13) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

These rules do not require additional expenditures by state or local government units.

Rural Impact:

(14) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

These rules apply uniformly to both urban and rural areas. The MISS DIG statute exempts many farming activities from compliance with the act.

Environmental Impact:

(15) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

These rules have no environmental impact.

Small Business Impact Statement:

[Please refer to the discussion of “small business” on page 2 of this form.]

(16) Describe whether and how the agency considered exempting small businesses from the proposed rules.

Small businesses are not exempt from the act; therefore, they are not exempt from the rules.

(17) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

Small businesses that comply with the requirements of MISS DIG should not be disproportionately affected by the rules.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

These rules will not affect any small businesses that comply with the requirements of the statute.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The Commission did not establish different compliance or reporting requirements for small businesses.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

The only reporting requirements under these rules are mandated by the act and only apply to facility owners, the great majority of which are large businesses or local government entities.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

These rules do not involve design, operation, or performance standards.

(18) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

There is no disproportionate impact on small businesses due to size or geographic location.

(19) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

Most of the businesses that have reporting requirements under the statute and rules are large businesses or local units of government.

(20) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There are no compliance costs for small businesses that comply with the statute. Failure to comply could result in a fine.

(21) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

There are no legal or consulting costs for small businesses that comply with the statute.

(22) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no costs for small businesses that comply with the statute.

(23) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There is no exemption for small businesses.

(24) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

There is no public interest in establishing a lesser compliance standard for small businesses. Small businesses that comply with the statute will incur no additional costs.

(25) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

The Commission staff held stakeholder meetings with facility owners and with representatives of excavators (Michigan Infrastructure and Transportation Association), some of the members of which are small businesses. Due to the narrow scope of the proposed rules, there were no concerns with respect to the size of businesses affected by the rules.

Cost-Benefit Analysis of Rules (independent of statutory impact):

(26) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

Businesses and groups that comply with the statute should have no additional costs imposed by these rules.

(27) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

There are no additional statewide compliance costs for individuals or the public associated with the rules.

(28) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

There are no economic impacts, positive or negative, associated with these rules.

(29) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

As noted above, these rules provide a clear process for filing a MISS DIG complaint and an explanation and guidance for how a complaint will be processed by the Commission.

(30) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

There will be no impact on business growth or job creation in Michigan as a result of these rules.

(31) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Individuals and businesses that comply with the statute will not be affected, disproportionately or otherwise, by these rules.

(32) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The Commission relied on its own expertise attained in the development of similar rules that apply to other programs.

Alternatives to Regulation:

(33) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives to regulation.

(34) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

There is no market-based mechanism that would substitute for these rules.

(35) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The only alternative to the rules would be to not promulgate rules. The Commission Staff and interested parties

Additional Information

(36) As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The Commission has developed a Manual for Reporting of Incidents involving Damage to Underground Facilities that is available on the Commission's website.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

April 11, 2016

Date RIS approved:

May 6, 2016

ORR assigned rule set number:

2014-028 LR

Date of disapproval:

Explain:

More information needed:

Explain: